

ESTTA Tracking number: **ESTTA644206**

Filing date: **12/12/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92056509
Party	Plaintiff Autodesk, Inc.
Correspondence Address	JOHN L SLAFSKY WILSON SONSINI GOODRICH ROSATI 650 PAGE MILL RD PALO ALTO, CA 94304 1050 UNITED STATES jslafsky@wsgr.com, trademarks@wsgr.com
Submission	Motion to Compel Discovery
Filer's Name	John L. Slafsky
Filer's e-mail	jslafsky@wsgr.com, trademarks@wsgr.com
Signature	/John L. Slafsky/
Date	12/12/2014
Attachments	Autodesk Motion to Compel Discovery.pdf(222091 bytes) L Liss Declaration.pdf(1441690 bytes)

AUTODESK, INC.,
Petitioner,
v.
3D SYSTEMS, INC.,
Respondent.

Autodesk, Inc. (“Petitioner”) moves pursuant to TBMP § 523 to compel 3D Systems, Inc. (“Respondent”) to produce noticed witnesses for deposition and to satisfy its document and discovery obligations pursuant to the Board’s earlier order, well before such depositions occur. The motion is supported by the accompanying Declaration of Luke Liss, with exhibits attached thereto (“Liss Decl.”).

On October 30, 2014, the Board granted Petitioner’s motion to compel and ordered Respondent to produce various categories of relevant documents and information to Petitioner. The Board’s order (the “Discovery Order”) also provided that Petitioner would have the opportunity to conduct follow-up discovery after the prompt production of this material. There was nothing ambiguous about the scope or the timing of Respondent’s obligations. The Board directed the parties to complete discovery by December 30, 2014.¹ Accordingly, on November 10, 2014, Petitioner promptly noticed depositions of Respondent, with the expectation that Respondent would comply with the Discovery Order by producing documents well before the depositions and by making witnesses available.

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Petitioner's expectations were misplaced. *First*, Respondent still refuses to produce many of the documents expressly called for in the Discovery Order – documents that Petitioner and the Board contemplated would be made available to Petitioner before any depositions of Respondent – and instead has filed a Motion for Reconsideration. Mot. for Recons. (Docket No. 30).² *Second*, Respondent has not addressed fundamental flaws in the limited document production that it did make following the Discovery Order. *Third*, and most significantly, Respondent has now belatedly notified Petitioner – three business days prior to the depositions and just two weeks before Christmas – that it will not produce witnesses for deposition as noticed.

Petitioner does not bring a second motion to compel lightly, but it has no choice. Petitioner requires Board intervention to ensure access to key documents and testimony and to facilitate the proper completion of the pre-trial discovery process. The Board should once again direct Respondent to comply with its document production obligations under the Discovery Order, or alternatively, the Board should preclude Respondent from relying on any such documents or related information in connection with defense of this proceeding.³ In addition, the Board should direct Respondent to make available the three designated party witnesses (two individuals and a Rule 30(b)(6) witness) for discovery deposition, on consecutive days within a 30-day time period, before trial. Finally, the Board should reschedule the parties' trial disclosures and trial testimony periods for the earliest possible dates.

² While Petitioner considers Respondent's challenge to the Discovery Order to be wholly without merit (it is simply a reargument of points already carefully considered and addressed by the Board), Petitioner intends to address the Motion for Reconsideration in separate opposition papers.

³ In the Discovery Order, the Board stated that "[i]n the event Respondent fails to provide Petitioner with full and complete responses to the outstanding discovery, as required by this order, Respondent will be barred from relying upon or later producing documents or facts at trial withheld from such discovery." Discovery Order 6 n.3 (Docket No. 29). Together with any preclusion order, the Board should also make an adverse inference concerning any categories of documents which exist but which Respondent refuses to produce. The adverse inference would be that such documents support a finding of a likelihood of confusion and/or contradict any affirmative defenses on which Respondent is relying.

This Cancellation proceeding, commenced over two years ago, has been delayed too long. Petitioner should be permitted to complete its Board-ordered follow-up discovery and the parties should then be directed to proceed with a prompt trial of their respective claims and defenses.

I. BACKGROUND

A. The Parties' Dispute

Petitioner, based in California, develops and distributes computer-aided design software for, among other things, modeling, animation and “3D printing.” See www.autodesk.com. Respondent, based in South Carolina, holds itself out as offering “complete 3D content-to-print solutions,” which, importantly, include software products and a “platform of 3D authoring tools” which allow users to “scan, design, modify, inspect and print amazing content in 3D.” See www.3dsystems.com.

Petitioner has asserted a likelihood of confusion claim against Respondent’s registered 3DS (and design) trademark, Registration No. 4,125,612. Petitioner bases this claim, in part, on a prior registration of its 3DS MAX trademark, Registration No. 2,733,869. Pet. for Cancellation (Docket No. 1). Respondent, in turn, has denied Petitioner’s key allegations and asserted various affirmative defenses, including equitable defenses of laches, waiver and estoppel. Answer to Pet. for Cancellation (Docket No. 14).

B. The Meet-and-Confer Process

Petitioner’s previous efforts to meet and confer with Respondent concerning document production issues are detailed in Petitioner’s earlier Motion to Compel. Pet’r’s Mot. to Compel Disc. 4 (Docket No. 25). These efforts, already acknowledged by the Board, were specifically directed at various categories of documents that Respondent continues to withhold. Petitioner subsequently wrote to Respondent on December 8, 2014 to highlight deficiencies in Respondent’s most recent (November 29, 2014) document production. Liss Decl. Ex. 1. Respondent has yet to address the deficiencies in this production.

As to party depositions, Petitioner, shortly following the Discovery Order, served its Notices of Deposition on November 10, 2014. Liss Decl. Ex. 2. Respondent, however, did not acknowledge the deposition notices. Petitioner thus wrote to Respondent about the depositions on November 24, 2014, highlighting Respondent's obligation to serve timely written objections, if any. Liss Decl. Ex. 3. Respondent did not respond in any way, evidently electing not to serve any such objections or to provide any notice to Petitioner of any issues it may have had with the depositions as noticed.⁴ Petitioner followed up again on December 8, 2014; only then, four weeks after the notices were served and shortly before the depositions, did Respondent acknowledge the depositions and offer to speak with counsel.

On December 10, 2014, the parties' counsel participated in a 25-minute telephone discussion. During the December 10 phone conference, three business days before the scheduled depositions and shortly before Petitioner's counsel was scheduled to fly to South Carolina, Respondent for the first time notified Petitioner that it did not intend to produce the designated witnesses for deposition, as noticed. Liss Decl. ¶ 9. Petitioner's counsel explained to Respondent's counsel that such an eleventh-hour response, after the passage of an entire month (including prolonged silence after follow-up by Petitioner) and with Christmas fast approaching, was not reasonable under the circumstances, and that Petitioner would necessarily be compelled to seek further direction from the Board.⁵

⁴ Having not received any objections, formal or otherwise, to the noticed depositions, and mindful of the approaching Christmas period, Petitioner's California-based counsel made arrangements to fly cross-country, to hire court reporters and to secure venues for the depositions in South Carolina.

⁵ During the phone conference Respondent insisted on tethering discussion of Petitioner's depositions to another topic – the depositions of Petitioner that Respondent had noticed but then unilaterally adjourned, *sine die*, in August 2014. Petitioner had promptly responded to these deposition notices – both via letter and via detailed, written objections – in August 2014, and significantly, *Respondent made no further attempt to pursue deposition testimony*. Petitioner thus reminded Respondent during the phone conference that given the passage of time without action by Respondent, the time for Respondent's discovery depositions had passed and, in any event, there were procedural improprieties or other issues regarding the deposition notices served by Respondent (as fully detailed in Petitioner's objections served four months earlier).

C. The Discovery Order and Respondent's Response

By way of background, the Board issued the Discovery Order in response to Petitioner's Motion to Compel. The Discovery Order lifted suspension of the proceedings, and compelled Respondent to further respond to various written discovery demands and to produce various categories of responsive documents. Discovery Order (Docket No. 29). Among the categories of documents that the Board directed Respondent to produce are documents related to Respondent's 3DS-related marks generally, which are relevant to determining likelihood of confusion and are likely to implicate the affirmative defenses on which Respondent is now relying.⁶ The Board gave Respondent 30 days to complete such discovery, and further extended the discovery period "to allow Petitioner time in which to review Respondent's discovery responses compelled by this order and to conduct follow-up, if necessary." *Id.* at 7 n.4.

On November 29, 2014 – the Saturday evening following Thanksgiving (the last possible day for Respondent to produce documents required by the Discovery Order) – Respondent forwarded a modest document production. Respondent also, that same day, filed its Motion for Reconsideration, in which it challenged the Discovery Order and essentially acknowledged that its most recent production did not contain much of the discovery that the Board had ordered. *See* Mot. for Recons. 1 n.1 (Docket No. 30). (In fact, a cursory review of the document production forwarded by Respondent makes clear that entire categories called for by the Board are missing). Respondent's Motion for Reconsideration thus had the effect of compelling Petitioner to prepare

⁶ Other categories of documents that the Board directed Respondent to produce before Petitioner's "follow-up" discovery include, for example: (1) marketing documents, including plans and projections, relating to the any products or services offered by Respondent under a 3DS mark; (2) all documents relating to Respondent's efforts or plans to promote or expand awareness of its 3DS marks; (3) all documents related to Respondent's adoption of any 3DS mark (including documents regarding possible alternatives); and (4) all non-privileged documents relating to this dispute or to their right to use its 3DS marks. The Board also ordered Respondent to answer certain Interrogatories and to otherwise supplement its discovery responses in a variety of respects.

for depositions absent entire categories of documents and information that Respondent had been expressly ordered to produce.

Moreover, Respondent's limited November 29 document production was deficient in two respects: without explanation, (1) logos, which are highly relevant to the parties' claims and defenses and are necessary in order to understand the context of Respondent's communications, are conspicuously missing from the text of numerous Respondent e-mails (*e.g.*, Liss Decl. Ex. 4); and (2) other e-mail communications are missing substantial text (*e.g.*, Liss Decl. Ex. 5).⁷ On December 8, 2014, Petitioner brought these issues to Respondent's attention, requesting that Respondent correct these problems in advance of the approaching depositions. *Id.* at Ex. 1. Respondent, however, has ignored Petitioner's communications regarding this issue and has not agreed to correct its document deficiencies.

Importantly, Respondent still has not served any written objections to Petitioner's deposition notices, which, in situations such as this, are required under the Federal Rules of Civil Procedure and the TBMP. *See* TBMP 404.08(a) ("Objections to errors and irregularities in a notice of the taking of a discovery deposition must be promptly served, in writing, on the party giving the notice; any such objections that are not promptly served are waived."); Fed. R. Civ. P. 32(d)(1) ("An objection to an error or irregularity in a deposition notice is waived unless promptly served in writing on the party giving the notice."). Yet during the parties' December 10 meet-and-confer telephone conference, when Respondent finally acknowledged Petitioner's deposition notices, Respondent took the position that its witnesses would not appear on the noticed dates, and it did not offer any alternative dates. Liss Decl. ¶ 9. Respondent took this position at the eleventh hour, knowing that Petitioner had already made arrangements to travel,

⁷ While Petitioner has provided illustrative examples of defective documents to Respondent, these deficiencies appear in numerous communications throughout the entire production of November 29, 2014, raising questions about the thoroughness of Respondent's collection and production of documents.

and knowing that rescheduling at such a late date, right before the holidays, would be extremely difficult, if not impossible.

Absent the documents called for by the Discovery Order, and absent confirmation that the noticed depositions would promptly proceed, and with the discovery cut-off fast approaching, Petitioner has been compelled to seek Board intervention once again.

ARGUMENT

II. RESPONDENT'S DELAYS HAVE NECESSITATED THIS MOTION

In the Discovery Order, the Board ordered an additional 60-day period that should have been sufficient for Petitioner to complete its discovery. It was not sufficient, however, because (i) Respondent elected to challenge the Discovery Order via its Motion for Reconsideration, (ii) Respondent continued to withhold documents called for by the Discovery Order, and (iii) Respondent waited a month before acknowledging Petitioner's deposition notices and then asserted for the first time, at the last moment, that it would not make witnesses available, as noticed. Such delay and obstructionist behavior is prejudicial to Petitioner and runs contrary to the Board's direction in the Discovery Order: "The Board expects the parties (and their attorneys) to cooperate with one another in the discovery process and looks with extreme disfavor on those who do not." Discovery Order 6 n.2 (Docket No. 29).

A. Respondent Failed to Timely Object or Otherwise Respond to the Deposition Notices, and Petitioner Will Suffer Prejudice Absent Board Intervention

As set forth above, Respondent did not object or otherwise respond to the deposition notices served by Petitioner shortly after the Discovery Order. Respondent remained silent despite follow-up by Petitioner two weeks after the notices were served and despite Petitioner's written communication that, absent timely objection, it was moving forward with travel and deposition arrangements. Petitioner reminded Respondent that "under the TBMP and Federal Rules of Civil Procedure, objection to deposition notices are waived when not promptly served in writing." Liss Decl. Ex. 3; *see also* TBMP 404.08(a); Fed. R. Civ. P. 32(d)(1). Respondent remained silent.

Only on December 8, 2014 did Respondent acknowledge the depositions and give any indication that scheduling may be an issue – and that was only in response to further outreach by Petitioner regarding the issues with Respondent’s document production. Liss Decl. Ex. 1. On December 10, 2014, Respondent finally made clear, during telephonic meet-and-confer, that its witnesses would not appear on the noticed dates. Liss Decl. ¶ 9.⁸

Respondent’s delayed response is improper, and any objection to the deposition notices by Respondent should be deemed waived. *See, e.g., E. & J. Gallo Winery v. Gibson, Dunn & Crutcher LLP*, 432 Fed. Appx. 657, 659 (9th Cir. 2011) (objections to deposition notice waived where deponent never sought a protective order, nor objected in writing); *see also Credit Suisse First Boston Fin. Corp. v. Lamattina*, No. 05-CV-4350 (CPS) (KAM), 2005 U.S. Dist. LEXIS 38447 (E.D.N.Y. Dec. 20, 2005) (ordering sanctions where deponent failed to “dispute the correctness or the regularity of the notice of deposition he presumably received” and noting that “if he had, he promptly should have served a written objection pursuant to Fed. R. Civ. P. 32(d)(1)”). Given the Discovery Order, Respondent was well aware that there would be a very limited period to conduct depositions following its Board-ordered production – especially given that Respondent ultimately did not provide even a fraction of the discovery necessary to conduct such depositions until essentially the last possible moment – late on the Saturday of Thanksgiving weekend. Moreover, Petitioner had plainly attempted to notice the depositions for a convenient time and place – December 15-17 – in the very city where Respondent’s headquarters are located. This timing was carefully calculated to: (a) allow time for Petitioner to review the discovery Respondent had been ordered to provide; while (b) avoid attempting to schedule such deposition discovery during the thick of the holidays at the end of December. Accordingly, given the lack of objection or response by Respondent over the following weeks,

⁸ Had Respondent promptly notified Petitioner, in response to the deposition notices, that Respondent desired adjustments to the noticed schedule, then Petitioner would have of course worked to arrange mutually convenient dates well in advance of Christmas and the Board’s December 30 discovery cut-off.

Petitioner could only assume that such scheduling was acceptable to Respondent given the Board's pretrial schedule and related obvious time constraints.

B. Respondent's Deficient Document Production

Compounding Respondent's failure to timely object or respond to Petitioner's deposition notices are various defects in the document production made by Respondent on November 29, 2014. Not only did Respondent refuse to produce most of the categories of highly relevant discovery ordered by the Board (which, as noted above, now need to be addressed again in Petitioner's opposition to the Motion for Reconsideration), the production Respondent did make was technically deficient. As noted above: (1) logos, which are key to the issues in dispute and are necessary to understand the context of communications, are missing from the text of numerous email communications (Liss Decl. Ex. 4); and (2) other communications appear to be missing portions of written text, for reason unclear (Liss Decl. Ex. 5). These are not a few stray, anomalous errors—they are present throughout a significant portion of Respondent's production, and would have necessarily been obvious to Respondent as it prepared its production. Petitioner has raised the issue to Respondent in multiple email communications. Liss Decl. ¶ 11 & Ex. 1. Respondent has yet to respond on this issue, or to correct its production, notwithstanding Respondent's obligation to do so. *See* Discovery Order 6 n.3 (Docket No. 29) (“[T]he parties are reminded that a party that has responded to a discovery request has a duty to supplement or correct that response.”).

CONCLUSION

For the reasons stated above, Petitioner respectfully requests that the Board grant this Motion in entirety and: (1) again direct Respondent to comply promptly with its document production obligations under the Discovery Order, or alternatively, preclude Respondent from relying on any such documents or related information in connection with defense of this proceeding and make an adverse inference regarding same; (2) direct Respondent to make available the three designated party witnesses (two individuals and a 30(b)(6) witnesses) for

discovery deposition, on consecutive days within a 30-day time period, before trial; and (3) reschedule the parties' trial disclosures and trial testimony periods for the earliest possible dates.

Pursuant to TBMP § 510.03(a), Petitioner submits that this proceeding should be suspended once more pending disposition of this Motion and of Respondent's Motion for Reconsideration.

Dated: December 12, 2014

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ John L. Slafsky
John L. Slafsky
Luke A. Liss
Stephanie S. Brannen
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, California 94304-1050
Tel: (650) 493-9300
Fax: (650) 493-6811
trademarks@wsgr.com

Attorneys for Petitioner
AUTODESK, INC

CERTIFICATE OF SERVICE BY MAIL

I, Elvira Minjarez, declare:

I am employed in Santa Clara County. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304-1050.

I am readily familiar with Wilson Sonsini Goodrich & Rosati's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence would be deposited with the United States Postal Service on this date.

On this date, I served **PETITIONER'S FURTHER MOTION TO COMPEL DISCOVERY** on each person listed below, by placing the document(s) described above in an envelope addressed as indicated below, which I sealed. I placed the envelope(s) for collection and mailing with the United States Postal Service on this day, following ordinary business practices at Wilson Sonsini Goodrich & Rosati.

Jason M. Sneed
Sneed PLLC
610 Jetton St, Suite 120-107
Davidson, NC 28036

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Palo Alto, California on December 12, 2014.

/s/ Elvira Minarez
Elvira Minjarez

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AUTODESK, INC.,

Petitioner,

v.

3D SYSTEMS, INC.,

Respondent.

Cancellation No. 92056509

**DECLARATION OF LUKE LISS IN SUPPORT OF
PETITIONER'S FURTHER MOTION TO COMPEL DISCOVERY**

I, Luke Liss, declare:

1. I am an associate at Wilson Sonsini Goodrich & Rosati, counsel for Petitioner Autodesk, Inc. ("Autodesk") in this matter. I have personal knowledge of the facts set forth in this declaration, and if called as a witness I could competently testify to them.

Depositions of Respondent

2. The Board's order directing Respondent to disclose documents and information, setting a period for Petitioner to conduct follow-up discovery and ordering a discovery cut-off is dated October 30, 2014. Discovery Order (Docket No. 29).

3. Attached hereto as Exhibit 1 is a true and correct copy of an e-mail exchange between the parties' counsel dated December 8, 2014.

4. Attached hereto as Exhibit 2 are true and correct copies of three deposition notices for James Hopeck, Cathy Lewis and 3D Systems' 30(b)(6) witness dated November 10, 2014. The notices were served by Petitioner's counsel on Respondent's counsel via U.S. mail on November 10, 2014.

5. Having received no acknowledgement or response to the deposition notices, Petitioner sent a follow-up letter to Respondent's counsel. Attached hereto as Exhibit 3 is a true and correct copy of Petitioner's follow-up letter regarding the deposition notices. The letter was sent via e-mail to Respondent's counsel (along with additional copies of the deposition notices) on November 24, 2014. The text of the letter reads:

As you know, we served three deposition notices on you via mail on November 10, 2014 (copies are attached for your convenience). We have not received objections or otherwise heard from you regarding the depositions and, accordingly, we are proceeding with travel and other arrangements. We note that under the TBMP and Federal Rules of Civil Procedure, objections to deposition notices are waived when not promptly served in writing. *See* TBMP § 404.08(a); Fed. R. Civ. P. 32(d)(1).

6. Respondent did not respond to Petitioner's November 24, 2014 letter.

Respondent did not serve any written objections to the deposition notices.

7. Still having received no acknowledgement or objections regarding the deposition notices, on December 8, 2014 Petitioner followed up again, referencing the noticed depositions. *See* Exhibit 1.

8. Only on December 8, 2014, four weeks after service and well after Petitioner's follow-up letter, did Respondent's counsel acknowledge the upcoming depositions, noting "[w]e have not confirmed those dates you selected." *See* Exhibit 1.

9. On December 10, 2014, the parties met-and-conferred regarding the noticed depositions. During this phone conference Respondent stated – for the first time since the deposition notices were served on November 10, 2014 – that it would not produce its witnesses at the times and dates noticed. Petitioner responded that such position is unreasonable given the passage of time and lack of any objections or response to the deposition notices, especially in

light of the approaching holiday season and the Board's discovery cut-off deadline. Respondent did not propose alternative dates and its position did not otherwise change.

Document Production Issue

10. Attached hereto as Exhibits 4 and 5 are true and correct copies of illustrative documents from Respondent's document production. Such documents appear to Petitioner to either: (a) be missing logos referenced in the communications; and/or (b) be missing written text. These attached examples are consistent with a number of other documents that Petitioner believes contain similar errors.

11. Petitioner raised the issue of Respondent's production multiple times in its communications on December 8, 2014. *See* Exhibit 1. Respondent has not responded to or addressed the production issue.

I declare that the foregoing is true and correct to the best of my knowledge and recollection. Executed at Palo Alto, California, on December 12, 2014.



Luke Liss

EXHIBIT 1

From: Jason M. Sneed <jsneed@SneedLegal.com>
Sent: Monday, December 08, 2014 6:03 PM
To: Liss, Luke; Sarah Hsia
Cc: Slafsky, John; Brannen, Stephanie
Subject: Re: Autodesk v. 3D Systems

I am returning from vacation tomorrow. Let's talk Wednesday at 2:30 ET.

Jason

SNEED PLLC
Jason M. SNEED, Esq.
610 Jetton St., Suite 120-107
Davidson, NC 28036
704-779-3611 (direct)
JSneed@SneedLegal.com
www.SneedLegal.com

----- Reply message -----

From: "Liss, Luke" <lliss@wsgr.com>
To: "Jason M. Sneed" <jsneed@SneedLegal.com>, "Sarah Hsia" <Sarah@SneedLegal.com>
Cc: "Slafsky, John" <JSlafsky@wsgr.com>, "Brannen, Stephanie" <sbrannen@wsgr.com>
Subject: Autodesk v. 3D Systems
Date: Mon, Dec 8, 2014 7:42 PM

Jason:

We remain prepared to proceed with the depositions next week, as noticed. As you know, these depositions were noticed a month ago, on November 10, and we then followed up (i) to confirm the scheduling and (ii) note the absence of objections two weeks ago, on November 24. Your e-mail today is the first time that we have received any response to the deposition notices or to our follow-up communication.

You have not addressed our concerns below about the problems with the documents that you recently produced pursuant to Board order. So that we may prepare for the depositions, please address the document issues as soon as possible, preferably tomorrow.

As you know, we previously expressed concern to you, via letter dated August 11 and subsequent written objections served on August 22, about procedural deficiencies with respect to the notices of deposition that you served (and then adjourned). You indicated last summer that you intended to "take action" on this issue, but we have not heard further from you concerning this issue for well over three months now.

We are available to confer about the depositions either tomorrow at 2-2:30pm PT or on Wednesday 9-12 or 2-5 PT. Please let us know which time works best and whether we should call your office.

Luke

From: Jason M. Sneed [<mailto:jsneed@SneedLegal.com>]
Sent: Monday, December 08, 2014 11:10 AM
To: Liss, Luke; Sarah Hsia
Cc: Slafsky, John; Brannen, Stephanie
Subject: Re: Autodesk v. 3D Systems

We need to discuss the parties' deposition notices and scheduling. I would propose a call for Wednesday. We have not confirmed those dates you selected.

Jason

SNEED PLLC
Jason M. SNEED, Esq.
610 Jetton St., Suite 120-107
Davidson, NC 28036
704-779-3611 (direct)
JSneed@SneedLegal.com
www.SneedLegal.com

----- Reply message -----

From: "Liss, Luke" <lliss@wsgr.com>
To: "Sarah Hsia" <Sarah@SneedLegal.com>, "Jason M. Sneed" <jsneed@SneedLegal.com>
Cc: "Slafsky, John" <JSlafsky@wsgr.com>, "Brannen, Stephanie" <sbrannen@wsgr.com>
Subject: Autodesk v. 3D Systems
Date: Mon, Dec 8, 2014 1:45 PM

Jason/Sarah,

We write regarding 3D Systems' document production of November 29. In short, there are fundamental issues with the way the documents were produced that affect numerous documents. For example, in a number of emails logos are missing, which are necessary to understand the context of discussions. An example is attached. In a number of other emails, it is clear there is text missing from communications, whether altered or otherwise. An example of this is also attached. As you know, depositions begin next Monday December 15th – please advise today whether you will correct the production and re-send to us by this Wednesday December 10 so that we may have correct documents for use during questioning.

Thanks,
Luke

This email and any attachments thereto may contain private, confidential, and privileged material for the sole use of the intended recipient. Any review, copying, or distribution of this email (or any attachments thereto) by others is strictly prohibited. If you are not the intended recipient, please contact the sender immediately and permanently delete the original and any copies of this email and any attachments thereto.

EXHIBIT 2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AUTODESK, INC.,)	
)	
Petitioner,)	Cancellation No. 92056509
)	
v.)	
)	
3D SYSTEMS, INC.,)	
)	
Respondent.)	

NOTICE OF DEPOSITION OF JAMES HOPECK

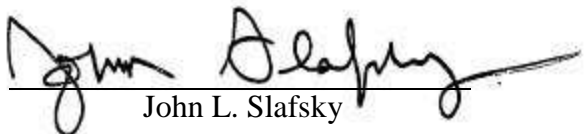
PLEASE TAKE NOTICE that, pursuant to Rule 30 of the Federal Rules of Civil Procedure and TBMP § 404.05, Petitioner Autodesk, Inc. ("Autodesk"), will take the deposition upon oral examination of James Hopeck, Vice-President and Corporate Controller, 3D Systems, Inc. Mr. Hopeck was identified in the Initial Disclosures of Respondent 3D Systems, Inc., in the above-captioned action.

The deposition will begin on December 15, 2014 at 10 a.m. at the Hilton Garden Inn Rock Hill, located at 650 Tinsley Way, Rock Hill, South Carolina 29730. The deposition will be transcribed stenographically, and will continue from day-to-day until completed. You are invited to attend and cross-examine.

Dated: November 10, 2014

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: 
John L. Slafsky

Attorneys for Petitioner
AUTODESK, INC.

CERTIFICATE OF SERVICE BY MAIL

I, Elvira Minjarez, declare:

I am employed in Santa Clara County. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304-1050.

I am readily familiar with Wilson Sonsini Goodrich & Rosati's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence would be deposited with the United States Postal Service on this date.

On this date, I served **NOTICE OF DEPOSITION OF JAMES HOPECK** on each person listed below, by placing the document described above in an envelope addressed as indicated below, which I sealed. I placed the envelope for collection and mailing with the United States Postal Service on this day, following ordinary business practices at Wilson Sonsini Goodrich & Rosati.

Jason M. Sneed
Sneed PLLC
610 Jetton St, Suite 120-107
Davidson, NC 28036

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Palo Alto, California on November 10, 2014.


Elvira Minjarez

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AUTODESK, INC.,)	
)	
Petitioner,)	Cancellation No. 92056509
)	
v.)	
)	
3D SYSTEMS, INC.,)	
)	
Respondent.)	

NOTICE OF DEPOSITION OF CATHY LEWIS

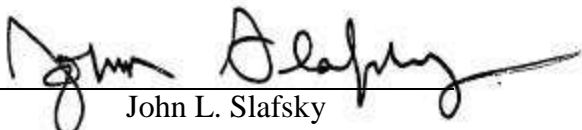
PLEASE TAKE NOTICE that, pursuant to Rule 30 of the Federal Rules of Civil Procedure and TBMP § 404.05, Petitioner Autodesk, Inc. ("Autodesk"), will take the deposition upon oral examination of Cathy Lewis, Chief Marketing Officer, 3D Systems, Inc. Ms. Lewis was identified in the Initial Disclosures of Respondent 3D Systems, Inc., in the above-captioned action.

The deposition will begin on December 16, 2014 at 10 a.m. at the Hilton Garden Inn Rock Hill, located at 650 Tinsley Way, Rock Hill, South Carolina 29730. The deposition will be transcribed stenographically, and will continue from day-to-day until completed. You are invited to attend and cross-examine.

Dated: November 10, 2014

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: 
John L. Slafsky

Attorneys for Petitioner
AUTODESK, INC.

CERTIFICATE OF SERVICE BY MAIL

I, Elvira Minjarez, declare:

I am employed in Santa Clara County. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304-1050.

I am readily familiar with Wilson Sonsini Goodrich & Rosati's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence would be deposited with the United States Postal Service on this date.

On this date, I served **NOTICE OF DEPOSITION OF CATHY LEWIS** on each person listed below, by placing the document described above in an envelope addressed as indicated below, which I sealed. I placed the envelope for collection and mailing with the United States Postal Service on this day, following ordinary business practices at Wilson Sonsini Goodrich & Rosati.

Jason M. Sneed
Sneed PLLC
610 Jetton St, Suite 120-107
Davidson, NC 28036

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Palo Alto, California on November 10, 2014.



Elvira Minjarez

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AUTODESK, INC.,)	
)	
Petitioner,)	Cancellation No. 92056509
)	
v.)	
)	
3D SYSTEMS, INC.,)	
)	
Respondent.)	

NOTICE OF DEPOSITION

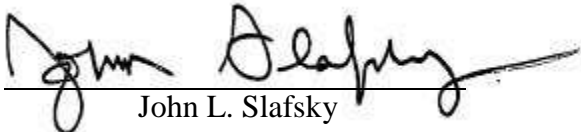
PLEASE TAKE NOTICE that, pursuant to Rule 30 of the Federal Rules of Civil Procedure and TBMP § 404.05, Petitioner Autodesk, Inc. ("Autodesk"), will take the deposition upon oral examination of Respondent 3D Systems, Inc. ("3D Systems"). Pursuant to Federal Rule of Civil Procedure 30(b)(6), 3D Systems shall designate "one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf" to testify as to information known or reasonably available to 3D Systems regarding the subject matters set forth in Exhibit A hereto.

The deposition will begin on December 17, 2014 at 10 a.m. at the Hilton Garden Inn Rock Hill, located at 650 Tinsley Way, Rock Hill, South Carolina 29730. The deposition will be transcribed stenographically, and will continue from day-to-day until completed. You are invited to attend and cross-examine.

Dated: November 10, 2014

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: 
John L. Slafsky

Attorneys for Petitioner
AUTODESK, INC.

EXHIBIT A

DEFINITIONS

As used herein, the following terms have the following definitions:

- a. “3D Systems” means not only 3D Systems, but also its partners, agents, officers, employees, representatives, and attorneys, and any predecessors, subsidiaries, controlled and affiliated companies, and their agents, officers, employees, representatives and attorneys.
- b. “3DS & Design Mark” refers to the subject of U.S. Reg. No. 4,125,612.
- c. “3DS MAX Mark” refers to the subject of U.S. Reg. No. 2,733,869.

TOPICS

- 1. The application to register the 3DS & Design Mark.
- 2. The identity of any competitors of 3D Systems.
- 3. The classes of purchasers to who 3D Systems markets, advertises or promotes its products and services.
- 4. Autodesk’s 3DS MAX mark and its 3DS MAX product.
- 5. 3D Systems’ past and present plans for use of the designation “3DS” or variations thereof in connection with its branding, advertising, marketing or promotion.
- 6. The adoption and use of the 3DS & Design Mark by 3D Systems.
- 7. 3D Systems’ awareness of Autodesk’s 3DS MAX Mark and 3DS MAX product.
- 8. The products and services offered by 3D Systems and by Autodesk, respectively.
- 9. Future products and services to be offered by 3D Systems and by Autodesk, respectively.
- 10. Consumer confusion, if any, between products developed or distributed by 3D Systems and products developed or distributed by Autodesk.
- 11. Consumer awareness of the 3DS & Design Mark.
- 12. 3D Systems’ efforts or plans, if any, to interest users of Autodesk products or services in 3D Systems products or services.
- 13. 3D Systems’ efforts to preserve, collect and produce documents and information responsive to Autodesk’s discovery requests.

CERTIFICATE OF SERVICE BY MAIL

I, Elvira Minjarez, declare:

I am employed in Santa Clara County. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304-1050.

I am readily familiar with Wilson Sonsini Goodrich & Rosati's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence would be deposited with the United States Postal Service on this date.

On this date, I served **NOTICE OF DEPOSITION** on each person listed below, by placing the document described above in an envelope addressed as indicated below, which I sealed. I placed the envelope for collection and mailing with the United States Postal Service on this day, following ordinary business practices at Wilson Sonsini Goodrich & Rosati.

Jason M. Sneed
Sneed PLLC
610 Jetton St, Suite 120-107
Davidson, NC 28036

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Palo Alto, California on November 10, 2014.


Elvira Minjarez

EXHIBIT 3

November 24, 2014

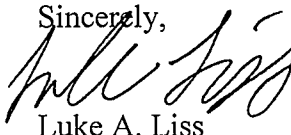
Via Email

Jason M. Sneed, Esq.
Sarah C. Hsia, Esq.
Sneed pllc
610 Jetton St., Suite 120-107
Davidson, NC 28036

Dear Jason and Sarah:

As you know, we served three deposition notices on you via mail on November 10, 2014 (copies are attached for your convenience). We have not received objections or otherwise heard from you regarding the depositions and, accordingly, we are proceeding with travel and other arrangements. We note that under the TBMP and Federal Rules of Civil Procedure, objections to deposition notices are waived when not promptly served in writing. *See* TBMP 404.08(a); Fed. R. Civ. P. 32(d)(1).

Sincerely,



Luke A. Liss

Enclosures

EXHIBIT 4

From: "Bedu, Camille" <Camille.Bedu@3dsystems.com>

Sent: Mon, 01 Feb 2010 19:12:50 +0000

To: "Barley, Lena" <BarleyL@3dsystems.com>

Subject: logo

Here is the logo. I Hope it's better that way!

From: Janice Soucey <Janice@dewchild.com>
Sent: Wed, 11 May 2011 15:17:46 +0000
To: "Lewis, Cathy" <Cathy.Lewis@3dsystems.com>
Subject: clean template

Here's a version with the old logo and the content slide cleaned up for the sales person that needs it.

From: Janice Soucey <Janice@dewchild.com>
Sent: Sun, 15 May 2011 02:28:37 +0000
To: "Lewis, Cathy" <Cathy.Lewis@3dsystems.com>
Subject: RE: view this one

View this one. It auto previews...

From: Lewis, Cathy [mailto:lewiscl@3DSystems.Com]
Sent: Saturday, May 14, 2011 9:53 PM
To: Janice@dewchild.com; Hayes, Katharina
Subject: Re: progression slides

I prefer the 2nd version but the words need to appear more random in size and placement (mostly placement) and we do need to get additional words on the second slide -

The first slide needs the words to move up on the right and left side to begin the frame the logo more and the Word stereolithography needs to be more prominent and founding technology less so . .
I will send more words shortly . . .

From: Janice Soucey [mailto:Janice@dewchild.com]
Sent: Saturday, May 14, 2011 09:28 PM
To: Lewis, Cathy; Hayes, Katharina
Subject: progression slides

In order to view the animation you'll have to preview the file in PowerPoint.

We talked about animating and talked about doing two separate slides but never decided which to use. I created an animatio

EXHIBIT 5

From: Janice Soucey <Janice@dewchild.com>

Sent: Fri, 29 Apr 2011 19:29:01 +0000

To: "Lewis, Cathy" <Cathy.Lewis@3dsystems.com>, "Hayes, Katharina"

<Katharina.Hayes@3dsystems.com>, "Barley, Lena" <Lena.Barley@3dsystems.com>

Subject: RE: Booth mock up

I just talked to Sundog Design about the bars on the booth. They will jut out from the mural a little over an inch. That means that our text would need to be even further apart than it is now, which is going to make it even more difficult to read. When people approach this booth mostly they will approach from the side, so the part that juts out will block the part of the letter it's next to. Depending on where they are standing the P in print for example, might be blocked out completely.

Also, because the booth is 30 ft long, in order to read the entire slogan at a glance, they will need to be far away.

What if we did two slogans? One over the first panel of three and another over the second panel of three? Or we just repeat the slogan twice? I think it would look better and be easier to read.

He also mentioned to add the 3D logo to the wings on the side would be an additional fee. Just so you know.

If you don't understand what I mean about the positioning of the lette

From: "Reichental, Abe" <Abe.Reichental@3dsystems.com>
Sent: Tue, 10 May 2011 03:32:26 +0000
To: "Lewis, Cathy" <Cathy.Lewis@3dsystems.com>
Subject: Re: 3DS Company Overview New Logo Option 2.pptm

Can't open either

Take Care

Abe Reichental
President & CEO
3D Systems Corporation
Create with Confidence

email: reichental@3dsystems.com
www.3DSystems.com
www.3Dproparts.com
www.printin3D.com
NASDAQ: TDSC

This e-mail is intended for the exclusive use of the recipients named above and may constitute privileged or confidential information or otherwise be protected from disclosure. Dissemination, distribution, forwarding or copying of this e-mail by anyone other than the intended recipients is prohibited. If you have received this e-mail in error, please notify me immediately by reply e-mail or telephone and completely delete or destroy any and all electronic or other copies of the original message and any attachments to it. Thank you.

From: Cathy Lewis <lewiscl@3DSystems.Com>
Date: Mon, 9 May 2011 17:01:22 -0400
To: Abe Reichental <reichental@3dsystems.com>
Subject: 3DS Company Overview New Logo Option 2.pptm

Abe,

In an effort to k

CERTIFICATE OF SERVICE BY MAIL

I, Elvira Minjarez, declare:

I am employed in Santa Clara County. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304-1050.

I am readily familiar with Wilson Sonsini Goodrich & Rosati's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence would be deposited with the United States Postal Service on this date.

On this date, I served **DECLARATION OF LUKE LISS IN SUPPORT OF PETITIONER'S FURTHER MOTION TO COMPEL DISCOVERY** on each person listed below, by placing the document(s) described above in an envelope addressed as indicated below, which I sealed. I placed the envelope(s) for collection and mailing with the United States Postal Service on this day, following ordinary business practices at Wilson Sonsini Goodrich & Rosati.

Jason M. Sneed
Sneed PLLC
610 Jetton St, Suite 120-107
Davidson, NC 28036

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Palo Alto, California on December 12, 2014.

/s/ Elvira Minarez
Elvira Minjarez